

STATE OF WISCONSIN
Controlled Substances Board

IN THE MATTER OF RULE-MAKING PROCEEDINGS BEFORE THE
CONTROLLED SUBSTANCES BOARD

ORDER OF THE CONTROLLED SUBSTANCES BOARD
ADOPTING EMERGENCY RULES

The statement of scope for this rule, SS # 070-16, was approved by the Governor on August 4, 2016, published in Register 728A2 on August 8, 2016, and approved by Controlled Substances Board on September 1, 2016. This emergency rule was approved by the Governor on September 16, 2016.

ORDER

An order of the Controlled Substances Board to create CSB 2.42 relating to scheduling furanyl fentanyl.

Analysis prepared by the Department of Safety and Professional Services.

FINDING OF EMERGENCY

The Controlled Substances Board finds that an emergency exists and that this rule is necessary for the immediate preservation of the public peace, health, safety, or welfare.

The Waupaca County District Attorney's office has provided the Controlled Substances Board with information relevant to emergency scheduling and the commencement of a prosecution concerning a controlled substance analog pursuant to s. 961.25, Stats. Furanyl fentanyl is an analog of the controlled substance schedule II drug, Fentanyl.

The Controlled Substances Board finds that scheduling furanyl fentanyl on an emergency basis is necessary to avoid an imminent hazard to the public safety. The substance is not included in any other schedule and no exemption or approval is in effect for the substance under 21 USC 355.

The Controlled Substances Board considered the following factors in making the finding of an imminent hazard to the public safety: the history and current pattern of abuse; the scope, duration and significance of abuse; and the risk to the public health.

ANALYSIS

Statutes interpreted: s. 961.14, Stats.

Statutory authority: ss. 961.11 (1) and (4m), Stats.

Explanation of agency authority:

The controlled substances board shall administer this subchapter and may add substances to or delete or reschedule all substances listed in the schedules in ss. 961.14, 961.16, 961.18, 961.20 and 961.22 pursuant to the rule-making procedures of ch. 227. (s. 961.11(1), Stats.)

The controlled substances board, by rule and without regard to the requirements of sub. (1m), may schedule a controlled substance analog as a substance in schedule I regardless of whether the substance is substantially similar to a controlled substance in schedule I or II, if the board finds that scheduling of the substance on an emergency basis is necessary to avoid an imminent hazard to the public safety and the substance is not included in any other schedule or no exemption or approval is in effect for the substance under 21 USC 355. Upon receipt of notice under s. 961.25, the board shall initiate scheduling of the controlled substance analog on an emergency basis under this subsection. The scheduling of a controlled substance analog under this subsection expires one year after the adoption of the scheduling rule. With respect to the finding of an imminent hazard to the public safety, the board shall consider whether the substance has been scheduled on a temporary basis under federal law or factors under sub. (1m) (d), (e) and (f), and may also consider clandestine importation, manufacture or distribution, and, if available, information concerning the other factors under sub. (1m). The board may not promulgate a rule under this subsection until it initiates a rule-making proceeding under subs. (1), (1m), (1r) and (2) with respect to the controlled substance analog. A rule promulgated under this subsection lapses upon the conclusion of the rule-making proceeding initiated under subs. (1), (1m), (1r) and (2) with respect to the substance. (s. 961.11 (4m), Stats.)

Related statute or rule: s. 961.14, Stats.

Plain language analysis:

This rule schedules furanyl fentanyl as a Schedule I controlled substance.

Summary of, and comparison with, existing or proposed federal regulation:

Furanyl fentanyl is not currently scheduled under the Controlled Substances Act. The U.S. Department of Justice, Division of Drug Enforcement in May 2016 scheduled two different fentanyl analogs.

Comparison with rules in adjacent states:

Illinois: A review of the Illinois Controlled Substances Act does not indicate the scheduling of furanyl fentanyl.

Iowa: A review of the Iowa Controlled Substances Act does not indicate the scheduling of furanyl fentanyl.

Michigan: A review of the Michigan Controlled Substances Act does not indicate the scheduling of furanyl fentanyl.

Minnesota: A review of the Minnesota Controlled Substances Act does not indicate the scheduling of furanyl fentanyl.

Summary of factual data and analytical methodologies:

Based upon the Waupaca County District Attorney's request for emergency scheduling and the finding of an imminent hazard to the public safety, the Controlled Substances Board decided to schedule furanyl fentanyl. In making the finding of imminent hazard to the public safety, the Board considered the following factors: the history and current pattern of abuse; the scope, duration and significance of abuse; and the risk to the public health.

Analysis and supporting documents used to determine effect on small business or in preparation of economic impact analysis:

The rule schedules a synthetic opiate as a Schedule I substance controlled substance which will not have any effect on small business.

Fiscal Estimate:

There is no fiscal impact.

Effect on small business:

The proposed rule does not have an economic impact on small businesses, as defined in s. 227.114 (1), Stats. The Department's Regulatory Review Coordinator may be contacted by email at Jeffrey.Weigand@wisconsin.gov, or by calling (608) 267-2435.

Agency contact person:

Sharon Henes, Administrative Rules Coordinator, Department of Safety and Professional Services, Division of Board Services, 1400 East Washington Avenue, Room 151, P.O. Box 8366, Madison, Wisconsin 53708; telephone 608-261-2377; email at Sharon.Henes@wisconsin.gov.

Place where comments are to be submitted and deadline for submission:

Comments may be submitted to Sharon Henes, Administrative Rules Coordinator, Department of Safety and Professional Services, Division of Board Services, 1400 East Washington Avenue, Room 151, P.O. Box 8366, Madison, WI 53708-8366, or by email to DSPSAdminRules@wisconsin.gov. Comments must be received on or before November 15, 2016 to be included in the record of rule-making proceedings.

TEXT OF RULE

SECTION 1. CSB 2.42 is created to read:

CSB 2.42 Scheduling of furanyl fentanyl. Section 961.14 (2) (ne) is created to read:
961.14 (2) (ne) Furanyl fentanyl (N-phenyl-N-[1-(2-phenylethyl)piperidin-4-yl]furan-2-carboxamide).

SECTION 2. EFFECTIVE DATE. This emergency rule shall take effect upon publication in the official state newspaper.

(END OF TEXT OF RULE)